IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2742 of 2003

For Approval and Signature:

HON'BLE MR JUSTICE M.R. SHAH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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MANGALAM ALLOYS PVT. LTD. - Petitioner(s)

Versus

HARIBHAI UJAMSHIBHAI PATEL - Respondent(s)

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Appearance :

MR DIPAK R DAVE for Petitioner No(s).: 1.

MR TR MISHRA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE M.R. SHAH

Date : 21/07/2005

ORAL JUDGMENT

1. In this petition under Articles 226 and 227 of the Constitution of India, the petitioner company has challenged the legality and validity of the judgment and award passed by the Labour Court, Kalol, dated 8.8.2001 passed in Reference (LCK) No.120/1991 in partly allowing the same by directing the petitioner to reinstate the respondent workman with 70% of the backwages with continuity of service.
2. The respondent workman was serving with the petitioner as a wire-man. It is the case of the petitioner that he has voluntarily tendered the resignation, which was accepted. However, it is the case of the respondent workman that he has never tendered the resignation and the same was not accepted by the management and his service came to be terminated orally w.e.f. 13.11.1990. The respondent workman raised industrial dispute challenging his termination which was referred to Labour Court, Kalol, for its adjudication being Reference (LCK) No.120/1991. On appreciation of evidence and considering the deposition of the workman as well as the deposition of the witnesses examined on behalf of the petitioner i.e. Owner at Exh.22 and that of one Chhotalal at Exh.23, the Labour Court, has ultimately held that it is not proved that the resignation is that of the respondent workman and/or it has been accepted and therefore the termination of respondent workman w.e.f. 13.11.1990 is illegal. However, considering the fact that the respondent workman has not tried to get the job in the intervening period, awarded only 70% backwages. Being aggrieved and dissatisfied with the judgment and award passed by the Labour Court, Kalol, dated 8.8.2001 passed in Reference (LCK) No.120/1991, the petitioner company has preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

1. Shri Deepak R. Dave learned advocate appearing on behalf of the petitioner has vehemently submitted that the respondent workman has not challenged the resignation and only on the basis of minor discrepancies in the evidence of witnesses at Exhs.22 &23, it is held by the Labour Court that resignation is not accepted by Avinashbhai, the owner, and that has resulted into miscarriage of justice. It is further submitted that as per the judgment of the Hon'ble Supreme Court in case of North Zone Cultural Centre &Anr. Vs. Vedpathi Dinesh Kumar reported in 2003 LLR p.583, non communication of acceptance of the resignation does not make resignation inoperative provided there is in fact an acceptance before withdrawal. It is also further submitted that in fact, the respondent workman has worked only for 1 year and 3 months and there is no finding given by the Labour court as

to which provision of Industrial Dispute Act is violated. It is also further submitted that the Labour Court has unnecessarily considered the evidence minutely and considering some minor discrepancies has held that there was no acceptance of resignation by the owner and the same is errorneous and therefore it is requested to allow the present Special Civil Application.

2. Shri T.R.Mishra learned advocate appearing on behalf of the respondent workman while opposing the present Special Civil Application has submitted that on the basis of appreciation of evidence, the Labour Court has rightly held that there was no acceptance of resignation by the owner and therefore it is rightly held by the Labour Court that the termination is illegal and the Labour Court has rightly passed an order directing the petitioner to reinstate the respondent workman, which is not required to be interfered with exercising the powers under Articles 226 and 227 of the Constitution of India.

3. Heard the learned advocates appearing on behalf of the parties. It is not the case of the respondent workman that he has not tendered the resignation and/or the resignation is false one and/or it is not signed by him and/or at least there is no finding given by the Labour Court that the resignation is forged one and not signed by the respondent workman. Considering some minor discrepancies with regard to, who accepted the resignation and/or whether Avinashbhai, the owner, has directly accepted the resignation or not, the Labour Court held that it is not proved that the resignation was not accepted by the management. Considering the judgment of the Hon'ble Supreme Court that non communication of acceptance of the resignation does not make resignation inoperative provided there is in fact an acceptance before withdrawal. Therefore, in absence of any finding by the Labour Court to the effect that the resignation itself was either forged one and/or concocted, the other questions with regard to acceptance of the resignation and/or communication of acceptance of the resignation will become secondary.

4. Assuming that the resignation has not been accepted and the service of the respondent workman is alleged to have been terminated w.e.f. 13.11.1990, considering the fact that the respondent workman served only for 1 year and 3 months, there is no specific finding given by the Labour Court with regard to completion of 240 days and which provision of the Industrial Dispute Act is violated. In absence of any specific finding with regard to violation of the provision of the Industrial Dispute Act, the Labour Court was not justified in ordering reinstatement. In view of the aforesaid facts and circumstances, the matter is required to be remanded to the Labour Court for its fresh

decision and specific finding whether alleged resignation is forged one or not, and if ultimately it is found that the resignation bears the signature of the respondent workman, there are further things required to be considered with regard to acceptance/withdrawal if any, as to which provision of the Industrial Dispute Act is violated. etc. Considering the last drawing Salary and the earlier order passed by this Court on the dispute whether the respondent workman is permitted to resume duty or not, the respondent workman is required to be paid some wages lump sum for that past period, which as agreed by the learned advocate appearing on behalf of the petitioner, is quantified at Rs. 7200/-lump sum.

1. For the reasons stated above, the petition succeeds partly. The impugned judgment and award passed by the Labour Court, Kalol, dated 8.8.2001 passed in Reference (LCK) No.120/1991 is hereby quashed and set aside and the matter is remanded to the Labour Court, Kalol, for its fresh decision in accordance with law and on merits and fresh finding as stated hereinabove. The petitioner is directed to pay an amount of Rs.7200/- to the respondent workman being lump sum wages within a period of 4 weeks from today and the Labour Court, Kalol, is directed to decide and dispose of the Reference within a period of 6 months from the date of receipt of this order subject to cooperation of all the parties.
2. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.SHAH, J.)

kdc.